
Agreement on automatic exchange of information within the EU

October 16, 2015

In brief

The Finance Ministers of the EU member states have agreed on provisions for the automatic exchange of information on cross-border tax rulings. An EU Directive will include detailed provisions; the directive should be finalized before the end of 2015.

In detail

On October 6, 2015, EU Finance Ministers reached political agreement in Council to amend Directive 2011/16/EU on administrative cooperation in the field of taxation. The revised directive will require member states to automatically exchange a basic set of information on advance cross-border tax rulings (rulings) and advance pricing arrangements (APAs), both of which are defined broadly.

The directive will ensure that when one member state issues a ruling or APA, any other affected member state will be able to monitor the situation and the possible impact on its tax revenue. Member states receiving the basic set of information will be able to request further information, including the full text of the ruling or APA. The European Commission will develop a central directory to store the information exchanged. The

information will be accessible by all member states and — solely to the extent required for monitoring the correct implementation of the directive — the Commission as well.

Commencing January 1, 2017, the information that member states must send within three months after the end of the half of the calendar year during which the ruling or APA is issued, amended, or renewed, will include:

- the identification of the affected person (other than a natural person) and the group to which it belongs
- a summary of the ruling or APA's contents, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms so as to respect business secrecy or public policy
- the dates of the ruling or APA's issuance, amendment, or renewal, as well as the ruling or APA's start and end dates of validity (if specified)
- the ruling or APA type
- if referenced, the monetary amount involved in the ruling or APA's transaction or series of transactions
- a description of the criteria used to determine the transfer pricing or transfer price itself in the case of an APA
- for an APA, the identification of the method used for determining the transfer pricing or transfer price itself
- the identification of the other member states, if any, likely to be interested in the ruling or APA
- the identification of any person (other than a natural

person) in another member state, if any, likely to be affected by the ruling or APA and

- an indication as to whether the information communicated is based upon the ruling or APA itself or upon the request that led to the issuance of a bilateral/multilateral APA with a third country.

For rulings and APAs issued before January 1, 2017, a five-year look-back will apply as follows:

- For rulings and APAs issued, amended, or renewed between January 1, 2012, and December 31, 2013, such communication shall take place under the condition that they are still valid on January 1, 2014.

- For rulings and APAs issued, amended, or renewed between January 1, 2014, and December 31, 2016, such communication shall take place irrespective of whether they are still valid.

Member states may exclude rulings and APAs issued to companies with annual net turnover of less than €40 million at a group level, if such rulings and APAs were issued, amended, or renewed before April 1, 2016. This exemption will not apply to companies conducting mainly financial or investment activities.

When provisions of international treaties under which bilateral/multilateral APAs with third countries were concluded do not permit APA disclosures, basic

information relating only to the requests that led to the APAs' issuance will be exchanged automatically. More information on bilateral/multilateral APAs with third countries also can be exchanged, provided certain conditions are met.

The takeaway

The directive will be adopted at a forthcoming Council meeting, expected to take place in December 2015. As noted above, the exchange of information will apply to both new rulings and previously concluded rulings.

Let's talk

For a deeper discussion of how this may affect your business, please contact:

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